

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BAYER CORPORATION)
AND SUBSIDIARIES,)
)
Plaintiff and)
Counterclaim Defendant,)
)
) **CIVIL ACTION NO. 09-351**
vs.)
)
THE UNITED STATES,)
)
Defendant and)
Counterclaim Plaintiff.)

**BAYER CORPORATION AND SUBSIDIARIES'
ANSWER AND AFFIRMATIVE DEFENSES TO THE
COUNTERCLAIM OF THE UNITED STATES**

The Plaintiff and Counterclaim Defendant, Bayer Corporation and Its Subsidiaries (“Bayer”), by and through its counsel, files this Answer and Affirmative Defenses to the Counterclaim filed by the United States and hereby sets forth the following complete factual and legal defenses thereto:

ANSWER

Each paragraph in this Answer responds to the identically numbered paragraph in the United States’ Counterclaim. All allegations, declarations, claims or assertions of the United States’ Counterclaim that are not specifically admitted in this Answer are denied.

15. Paragraph 15 of the United States’ Counterclaim contains conclusions of law to which no response is required.

16. Paragraph 16 of the United States’ Counterclaim contains conclusions of law to which no response is required.

17. Bayer is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 17 of the United States' Counterclaim and, accordingly, those allegations are denied.

18. Bayer is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 18 of the United States' Counterclaim and, accordingly, those allegations are denied.

19. Bayer denies the allegations contained in Paragraph 19 of the United States' Counterclaim.

20. Bayer denies the allegations contained in Paragraph 20 of the United States' Counterclaim.

Bayer denies the allegations set forth in the "WHEREFORE" Paragraph immediately following Paragraph 20 of the United States' Counterclaim and denies that the United States is entitled to any of the relief prayed for in said WHEREFORE clause of the Counterclaim. To the contrary, the United States is not entitled to any relief against Bayer and the United States' Counterclaims should be dismissed with prejudice.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Bayer denies all allegations contained in the United States' Amended Counterclaim not specifically admitted herein.

SECOND AFFIRMATIVE DEFENSE

The United States' Counterclaim fails to set forth facts sufficient to state a claim upon which relief may be granted against Bayer and further fail to state facts sufficient to entitle the United States to the relief sought, or to any other relief whatsoever from Bayer.

Bayer reserves the right to assert additional affirmative defenses, at such time, and to such extent as warranted by discovery and factual developments in this case.

WHEREFORE, Bayer respectfully requests that this Court:

- A. Dismiss the United States' Counterclaim against Bayer with prejudice and enter final judgment against the United States;
- B. Deny the United States' request for a money judgment, interest and costs against Bayer;
- C. Award Bayer all costs, expenses, and attorneys' fees incurred in defending against the United States' claims; and
- D. Award Bayer such additional relief as the Court deems appropriate.

Respectfully submitted,

/s/ Clifton B. Cates
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Dated: October 28, 2009

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served through the Court's electronic transmission facilities this 28th day of October 2009 upon all counsel of record.

/s/ John M. McIntyre
John M. McIntyre